

WATER COUNCIL MEETING

NH Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

June 14, 2017
9:00 a.m.

Members present: Councilors: Beaurivage, Butler, Clark, Gegas, Hardy, Henderson, Joubert, O'Brien, Rawnsley and Tremblay

Members absent: Chairman Gilbert, Councilors: Boisvert, and Hinds

Also present were Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

Vice Chair Beaurivage called the meeting to order at 9:01 a.m.

1. Approval of Minutes of the May 10, 2017 Meeting

- ***Councilor Tremblay made a motion to accept the May 10, 2017 minutes with correction, second by Councilor Clark. Motion passed unanimously.***

2. Status of Appeals

Paula Scott presented an update on the following appeals:

I. New Appeals

Docket No. 17-04 WC – City of Rochester, NH Appeal

Subject: 02/14/17 Notice of Violation for PWS#2001010

Hearing Officer: Not assigned

Status: March 13, 2017 received Notice of Appeal. 3/20/17 issued receipt of Appeal letter.

Please note that the Council may have to determine whether the Appeal is within the Council's jurisdiction at their April 12, 2017 meeting. April 12, 2017 Council voted to defer Appeal for their attorney's opinion. May 10, 2017 Council voted to deny Appeal. June 1, 2017 issued Decision denying Notice of Appeal.

II. Decision and Orders that need to be written finalized and issued.

Docket No. 16-16 WC Suzanne Fournier, et al. Appeal

Re: 08/22/16 approval of Alteration of Terrain Permit No. AoT-1149 issued to the Town of Milford

Hearing Officer: David Conley assigned on 11/17/16

Recused: Councilor Henderson

Status: September 8, 2016 received Notice of Appeal. October 10, 2016 receipt of Appeal letter.

Council accepted the Appeal at their November 9, 2016 meeting. November 9, 2016 issued Appeal accepted letter. December 12, 2016 issued Notice of Pre-hearing Conference scheduled for January 23, 2017 at 10:30 a.m. 1/17/17 received Motion to Intervene from the Town of Milford. 1/23/17 PHC was held, Town of Milford's Motion to Intervene was granted and a hearing was scheduled for April 12, 2017 at 9 a.m. February 8, 2017 received Appearance from Atty.

Christopher Aslin for DES. 2/15/17 received Town of Milford's Motion to Remand, etc. 2/17/17 received Appellants' Objection to Town of Milford's Motions and also received their Witness and Exhibit list. 2/23/17 received DES' Witness and Exhibit List. March 6, 2017 received State's First Request for Information from Appellants. March 7, 2017 received Appellant's Request for Information from the State. 3/9/17 received State's Motion to Dismiss. 3/13/17 received Objection

to State's Motion to Dismiss. 3/20/17 Hearing Officer requested copies of attachments referenced in Notice of Appeal that were not attached. 3/22/17 received attachments (exhibits) referenced in the Notice of Appeal as requested by the Hearing Officer. April 3, 2017 received State's Motion to Continue Hearing. 4/4/17 issued Order granting State's Motion to Dismiss the Appeal. April 27, 2017 received Appellants' Motion for Rehearing. May 2, 2017 received Objection to Motion for Rehearing. 5/10/17 Council deferred action on the Motion for Rehearing to next meeting for their attorney's opinion. No attorney's opinion has been received. June 14, 2017 deferred to the next Council meeting.

Docket No. 16-23 WC – City of Rochester, NH Appeal

Subject: 12/19/16 Notice of Violation for PWS#2001010

Hearing Officer: Not assigned

Status: December 23, 2016 received Notice of Appeal. January 4, 2017 issued receipt of Appeal letter. Council to determine whether the Appeal is within the Council's jurisdiction. 1/11/17 Council voted to table Appeal for their attorney's opinion on jurisdiction. February 8, 2017 Council voted to decline to accept the Appeal as it is not within their jurisdiction. 2/27/17 issued Decision and Order on Notice of Appeal. March 8, 2017 received Motion for Rehearing. April 12, 2017 Council voted to defer Motion for Rehearing for their attorney's opinion. May 10, 2017 Council voted to deny the Motion for Reconsideration. June 1, 2017 issued Decision denying Motion for Reconsideration.

III. Hearings or PHCs Pending

Docket No. 16-10 WC (PNA) – Town of Lincoln Appeal

Re: 5/20/16 Administrative Order No. 16-012 WD

Hearing Officer: David Conley assigned on 7/18/16

Status: June 17, 2016 received Notice of Appeal. 6/20/16 issued receipt of Appeal letter. Council accepted the appeal at their July 13, 2016 meeting. 7/13/16 issued Appeal accepted letter. 7/29/16 received Appearance from Attorney General. December 14, 2016 issued Notice of Pre-Hearing Conference scheduled for January 23, 2017 at 11:30 a.m. PHC was held on 1/23/17 with a 2nd PHC scheduled for April 10, 2017 at 9 a.m. April 10, 2017 issued 2nd Pre-hearing Order with deadlines for filing. May 12, 2017 received Assented-to Motion for Extension of Time. 5/15/17 issued letter granting Assented-to Motion. 5/25/17 received Motion for Summary Judgment and Incorporated Memorandum of Law.

Docket No. 16-19 WC Patricia Rodrigues and John Corduff Appeal

Re: 8/31/16 approval of after-the-fact Alteration of Terrain Permit No. AoT-1154 issued to Gretchen Fowler, Trustee of the George R. Graves Revocable Trust

Hearing Officer: David Conley, Esq., assigned on 1/17/17

Status: October 3, 2016 received Notice of Appeal. 10/10/16 issued receipt of Appeal letter. Appeal initially appeared to be untimely. Based on information subsequently received, Appeal may be timely. If the Council determines that the Appeal was timely filed, it is likely that an Insufficient Appeal letter will have to be sent. A motion was made and passed to consider the Appeal timely filed on November 9, 2016. 11/9/16 issued insufficient Appeal letter. December 9, 2016 received revised Appeal. 12/21/16 issued receipt of revised Appeal letter. Council to accept or decline Appeal at January 11, 2017 meeting. Council accepted the Appeal at the January 11, 2017 meeting. 1/11/17 issued Appeal accepted letter. 1/30/17 issued Notice of Pre-Hearing Conference scheduled for February 22, 2017 at 10 a.m. February 17, 2017 received Appearance from Atty. Allen Brooks for the Department. 2/21/17 received email request from Appellant to postpone PHC due to medical event. 2/21/17 issued Ruling granting postponement. March 21, 2017 issued Notice of Pre-hearing Conference scheduled for April 10, 2017 at 10 a.m. April 10, 2017 issued Pre-hearing Order scheduling hearing for July 12, 2017. June 2, 2017 received

Appearance of Attorney Timothy Britain on behalf of permittee, Affidavit of Gretchen Fowler, Motion to Intervene, Motion to Continue and Motion to Dismiss. 6/5/17 received Appellants' Request to Continue. 6/8/17 received Objection to Motion to Dismiss. 6/9/17 issued letter ruling on Motions to Intervene, Continue Procedural Deadlines and hearing and Appellants' Motion to Continue. The Hearing is now scheduled for October 11, 2017 at 9 a.m.

Docket No. 17-01 WC (PNA) – Christopher and Rebecca Crowe Appeal

Subject: 12/21/16 Administrative Order No. 16-033 WD

Hearing Officer: David Conley, Esq., assigned on 3/15/17

Status: January 19, 2017 received Notice of Appeal. 1/20/17 issued Insufficient Appeal letter.

February 17, 2017 received Revised Notice of Appeal. March 1, 2017 issued Receipt of Revised Appeal letter. Council to accept or decline appeal at their March 8, 2017 meeting. Council

accepted Appeal at their March 8, 2017 meeting and issued Appeal accepted letter. April 6, 2017 issued Notice of Pre-hearing Conference scheduled for May 2, 2017 at 9 a.m. 4/12/17 received Appearance for Atty. Christopher Aslin. May 2, 2017 issued Pre-hearing Order scheduling hearing for September 13, 2017 at 9 a.m.

Docket No. 17-03 WC – Town of Hampton, NH Appeal

Subject: 1/13/17 Administrative Order No. 17-001 WD

Hearing Officer: David Conley, Esq., assigned on 3/15/17

Status: February 10, 2017 received Notice of Appeal. 2/15/17 issued Receipt of Appeal letter.

Council to accept or decline appeal at their March 8, 2017 meeting. Council accepted Appeal at their March 8, 2017 meeting and issued Appeal accepted letter. April 6, 2017 issued Notice of

Pre-hearing Conference scheduled for May 2, 2017 at 10 a.m. 4/12/17 received Appearance for Atty. Mary Maloney. 4/25/17 received DES' Assented-to Motion to Continue. May 1, 2017 issued letter granting Assented-to Motion to Continue. 5/2/17 issued Notice of Pre-hearing Conference scheduled for May 15, 2017 at 9 a.m. 5/11/17 received DES' Assented-to Motion to Continue Hearing. 5/12/17 issued letter granting Assented-to Motion to Continue and rescheduled PHC to July 17, 2017 at 9 a.m. June 7, 2017 issued letter rescheduling PHC to July 24, 2017 at 10 a.m.

Docket No. 17-06 WC – Town of Hampton, NH Appeal

Subject: 03/29/17 Administrative Order No. 17-006 WD issued to Wiggin Way home Owners Association AND Aquarion Water Company of NH, Inc.

Hearing Officer: David Conley, Esq., assigned on 5/17/17

Recused member: Councilor Boisvert

Status: April 28, 2017 received Notice of Appeal. May 1, 2017 issued receipt of Appeal letter.

Council accepted the appeal at the May 10, 2017 meeting. 5/11/17 issued Appeal accepted letter.

5/16/17 received Assented-To Motion to Consolidate (Docket No. 17-06 WC and Docket No. 17-07 WC). 5/17/17 received Appearance from Atty. Marcia Brown. 5/18/17 received Motion to Intervene. 5/25/17 issued ruling Granting Motion to Consolidate and Motion to Intervene. 5/25/17 issued Notice of Pre-hearing Conference scheduled for June 12, 2017 at 9:30 a.m. 5/29/17 received State's request to Continue Pre-hearing Conference. 6/7/17 issued letter granting request and rescheduling PHC for July 24, 2017 at 9 a.m. 6/13/17 received Request to Continue PHC.

Docket No. 17-07 WC – North Hampton Water Commission and Town of North Hampton Appeal

Subject: 03/29/17 Administrative Order No. 17-006 WD issued to Wiggin Way Home Owners Association AND Aquarion Water Company of NH, Inc.

Hearing Officer: David Conley, Esq., assigned on 5/17/17

Recused member: Councilor Boisvert

Status: April 28, 2017 received Notice of Appeal. May 4, 2017 issued receipt of Appeal letter. Council voted to accept appeal at the May 10, 2017 meeting. 5/11/17 issued Appeal accepted letter. 5/16/17 received Assented-to Motion to Consolidate (Docket No. 17-06 WC and Docket No. 17-07 WC). 5/17/17 received Appearance from Atty. Marcia Brown. 5/17/17 received Motion to Intervene. 5/25/17 issued ruling Granting Motion to Consolidate and Motion to Intervene.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

3. New Business

- a. Env-DW 1002 Water Supply Land Protection Program Rules
Holly Green, Drinking Water Ground Water Program
These are the procedures and criteria for the Water Supply Land Protection Grant Program. It is protecting land around a drinking water source. Most changes would clarify existing requirements. It now includes land trusts along with municipalities and water suppliers. The Public Hearing will be July 27th. Comments can be submitted through a week after.

Questions were addressed and discussion held.

4. Old Business

5. Next Meeting

September 13, 2017 Christopher and Rebecca Crowe Hearing at 9:00 a.m.

- ***Councilor Gegas made a motion to cancel July and August Water Council meetings, second by Councilor Henderson. Motion passed unanimously.***

6. Adjournment

- ***Councilor Butler made a motion for adjournment, second by Councilor Joubert. Motion passed unanimously.***

Meeting adjourned at 9:53 a.m.